

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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RICKY TEJADA,

Plaintiff,

v.

CORRECTIONAL OFFICER DALE et al.,

Defendants.

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No. 5:14-cv-05604

**ORDER**

AND NOW, this 30<sup>th</sup> day of September, 2015, upon consideration of Defendants' Motions to Dismiss, ECF No. 21, for the reasons set forth in the Memorandum issued this date, **IT IS ORDERED** that the Motion is **DENIED IN PART** and **GRANTED IN PART** as follows:

1. Defendants' Motion to dismiss Count 1 of the Amended Complaint is **DENIED**.
2. Defendants' Motion to dismiss Count 2 of the Amended Complaint is **GRANTED**.

Count 2 is **DISMISSED with prejudice**.

3. Defendants' Motion to dismiss Count 3 of the Amended Complaint is **DENIED IN**

**PART** and **GRANTED IN PART** as follows:

- a. Defendants' Motion to dismiss Count 3 is **DENIED** as to Plaintiff's claims under Article 1 § XIII of the Pennsylvania Constitution.
- b. Defendants' Motion to dismiss Count 3 is **GRANTED** as to Plaintiff's claims under Article 1 § IX of the Pennsylvania Constitution. Plaintiff's claims under Article 1 § IX of the Pennsylvania Constitution are **DISMISSED with prejudice**.

4. Defendants' Motion to dismiss Count 4 of the Amended Complaint is **DENIED IN PART** and **GRANTED IN PART** as follows:
  - a. Defendants' Motion to dismiss Count 4 is **GRANTED** as to Plaintiff's claims under 37 Pa. Code § 95.240. Plaintiff's claims under 37 Pa. Code § 95.240 are **DISMISSED with prejudice**.
  - b. Defendants' Motion to dismiss Count 4 is **DENIED** as to Plaintiff's claims under 37 Pa. Code § 95.241.
5. Defendants' Motion to dismiss Counts 5 of the Amended Complaint is **DENIED**.
6. Defendants' Motion to dismiss Count 6 of the Amended Complaint is **GRANTED**. Count 6 is **DISMISSED with prejudice**.
7. Defendants' Motion to dismiss all claims against Defendant Sommers is **GRANTED**. All claims against Defendant Sommers are **DISMISSED with prejudice**.
8. Defendant Sommers is **TERMINATED** as a party.
9. Within twenty days of the date of this Order, Defendants shall file an answer to the Amended Complaint.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.  
JOSEPH F. LEESON, JR.  
United States District Judge